

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

NATIONAL COUNCIL FOR ADOPTION,
BUILDING ARIZONA FAMILIES on behalf
of itself and its birth-parent clients, birth
parents D.V. and N.L., and baby boy T.W. by
and through his guardian ad litem PHILIP
(JAY) MCCARTHY, JR.,

Plaintiffs,

v.

SALLY JEWELL, in her official capacity as
Secretary of the United States Department of
the Interior, KEVIN WASHBURN, in his
official capacity as Assistant Secretary of
Indian Affairs, BUREAU OF INDIAN
AFFAIRS, and the UNITED STATES
DEPARTMENT OF THE INTERIOR,

Defendants.

Case No. 1:15-cv-00675

PLAINTIFFS' UNOPPOSED MOTION TO STAY THE CASE

Pursuant to Federal Rule of Civil Procedure 6(b) and Local Rule 7, Plaintiffs respectfully move this Court to stay the case, including Plaintiffs' deadline to respond to Defendants' Motion to Dismiss for Lack of Subject-Matter Jurisdiction and for Judgment on the Pleadings (the "Motion to Dismiss") and Defendants' deadline to file its reply, pending issuance of the Court's forthcoming opinion stating its reasons for denying Plaintiff National Council for Adoption's ("NCFA") Motion for Partial Summary Judgment. The government does not oppose this motion. As good cause for this request, Plaintiffs provide as follows:

1. The government filed its Motion to Dismiss on September 11, 2015. ECF Nos. 50-52. On September 24, this Court granted in part and denied in part the parties' request for an

extension of time and a schedule to file a response and reply to the Motion to Dismiss. ECF No. 59. Plaintiffs' opposition to the Motion to Dismiss is currently due on October 16, and Defendants' reply is due on October 26. A hearing on the motion is scheduled for November 13.

2. On September 29, the Court issued an order denying NCFA's Motion for Partial Summary Judgment. ECF Nos. 20-22, 61. The Court determined, for reasons to be stated in a forthcoming Memorandum Opinion and Order, that: (1) Plaintiffs lacked standing to challenge the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10,146 (Feb. 25, 2015) ("2015 Guidelines"); (2) the 2015 Guidelines are not a "final agency action" within the meaning of the Administrative Procedure Act ("APA"); and (3) the 2015 Guidelines are non-binding interpretive rules not subject to the APA's notice-and-comment procedures.

3. The Court's bases for denying NCFA's Motion for Partial Summary Judgment implicate several issues raised in the government's Motion to Dismiss. Specifically, the government argues that Plaintiffs do not have standing to bring their claims, that the 2015 Guidelines are not final agency action, and that the Guidelines did not require notice-and-comment rulemaking. ECF No. 52.

4. The Court's forthcoming opinion may or may not conclusively resolve some of the questions at issue in the Motion to Dismiss. For instance, if the Court determines that NCFA lacked standing because, as the government argued, its injuries are not redressable, the opinion may affect the standing arguments of all Plaintiffs. If, however, the Court determines that NCFA failed to establish a concrete injury in fact, the opinion would not necessarily resolve whether Building Arizona Families and the individual Plaintiffs have alleged a concrete injury for standing purposes. Accordingly, there is good cause to stay the case and the briefing on the

Motion to Dismiss until the Court issues its opinion, which will likely streamline the remaining issues to be briefed in the case.

5. Plaintiffs also may file a cross-motion for summary judgment on the remaining claims not addressed by NCFA's Motion for Partial Summary Judgment. Plaintiffs anticipate that the Court's forthcoming opinion may resolve aspects of any cross-motion as well.

6. Plaintiffs respectfully submit that it would be a waste of the Court's and the parties' resources to press forward with briefing and a hearing on issues that may be resolved by the Court's forthcoming opinion. Accordingly, Plaintiffs respectfully request that this Court stay the case, including Plaintiffs' deadline to respond to Defendants' Motion to Dismiss and to cross-move for summary judgment and Defendants' deadlines to file their reply in support of the Motion to Dismiss and opposition to any cross-motion, until the Court issues its forthcoming opinion.

7. Plaintiffs waive hearing on this unopposed motion.

Date: October 7, 2015

Respectfully submitted,

/s/Jacob S. Siler

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2015, I will cause to be electronically filed the foregoing with the Clerk of the Court for the Eastern District of Virginia using the CM/ECF system, which will then send a notification of such filing (NEF) to the following counsel of record:

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